STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 22, 2007
v	No. 266078 Berrien Circuit Court
THOMAS RAY SPANGLER, Defendant-Appellant.	LC No. 2005-402405-FH

Before: Hoekstra, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of manufacturing or possessing with intent to deliver methamphetamine, MCL 333.7401(2)(b)(i), maintaining a methamphetamine laboratory, MCL 333.7401c(2)(f), and maintaining a drug house, MCL 333.7405(1)(d). Defendant was sentenced to serve 70 to 240 months' imprisonment for the manufacturing or possessing with intent to deliver methamphetamine and maintaining a methamphetamine laboratory convictions, and 68 days' in jail for his conviction of maintaining a drug house. We affirm.

I. Sufficiency of the Evidence

Defendant challenges the sufficiency of the evidence to sustain his convictions. We review a challenge to the sufficiency of the evidence de novo to determine whether, when viewed in a light most favorable to the prosecution, the evidence presented at trial would permit a rational trier of fact to find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). The standard is deferential and requires that we draw all reasonable inferences and make credibility determinations in support of the jury verdict, and resolve all conflicts in the evidence in favor of the prosecution. *Id*. Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *Id*.

Viewing the evidence in a light most favorable to the prosecution and drawing all reasonable inferences in support of the jury verdict, the evidence was sufficient to convict defendant of manufacturing or possessing methamphetamine with the intent to deliver, MCL 333.7401(2)(b)(i). "With respect to manufacturing methamphetamine, the elements are (1) the defendant manufactured a controlled substance, (2) the substance manufactured was methamphetamine, and (3) the defendant knew he was manufacturing methamphetamine."

People v Meshell, 265 Mich App 616, 619; 696 NW2d 754 (2005). Regarding possession, "[a] person need not have physical possession of a controlled substance to be found guilty of possessing it." *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Rather, the question is "whether the defendant had dominion or control over the controlled substance." *Id.*

The evidence presented at trial showed that when the police arrived at the apartment defendant shared with his ex-wife, they found defendant hiding in a closet, standing beside a bucket from which an odor of ammonia was emanating, as well as a large storage tub containing methamphetamine manufacturing paraphernalia. His ex-wife testified that a few days before their arrest, defendant brought the bucket smelling of ammonia to the apartment, obtained supplies, and confined himself to the bedroom, where he engaged in behavior consistent with manufacturing methamphetamine. Moreover, defendant admitted ownership of five packets containing a total of 2.2 grams of methamphetamine, a quantity equal to approximately 450 doses each giving a 12 to 16 hour high and holding a street value of approximately $200 to $250. A digital scale commonly used to weigh quantities of drugs to package for sale was also found with the packets. The evidence was sufficient to support defendant's conviction of manufacturing or possessing methamphetamine with the intent to deliver. *Martin*, *supra*.

The evidence was also sufficient evidence to support defendant's conviction of maintaining a methamphetamine laboratory, MCL 333.7401c(2)(f). Aside from the bucket containing ammonia and storage tub containing methamphetamine manufacturing paraphernalia found in the bedroom, a search of the apartment yielded a plethora of assorted items commonly used to manufacture methamphetamine. Additionally, defendant's ex-wife testified that defendant engaged in behavior consistent with manufacturing methamphetamine in the days leading up to the incident. The jury could reasonably infer that defendant used the apartment to manufacture methamphetamine, that he intended to use it as a location for manufacturing methamphetamine, and/or that he possessed the equipment and chemicals and intended to use them to manufacture methamphetamine. See MCL 333.7401c(1)(a) and (b). Moreover, defendant's argument that the general definition of "manufacture" set out in MCL 333.7106(2) should be employed instead of the specific definition set out in MCL 333.7401c(7)(c) is without merit because "[w]here a statute supplies its own glossary, courts may not import any other interpretation but must apply the meaning of the terms as expressly defined." *People v Schultz*, 246 Mich App 695, 703; 635 NW2d 491 (2001).

Viewing the evidence in a light most favorable to the prosecution and drawing all reasonable inferences in support of the jury verdict, there was also sufficient evidence to convict defendant of knowingly keeping or maintaining the apartment and using it to keep or sell methamphetamine, MCL 333.7405(1)(d). This Court has held that "to 'keep or maintain' a drug house it is not necessary to own or reside at one, but simply to exercise authority or control over the property for purposes of making it available for keeping or selling proscribed drugs and to do so continuously for an appreciable period." *People v Griffin*, 235 Mich App 27, 32; 597 NW2d 176 (1999). Defendant's ex-wife testified that defendant moved into the apartment in April 2005, and that in the days preceding their arrest, he engaged in behavior consistent with manufacturing methamphetamine and instructed her on one occasion not to bring anyone else to the apartment. Moreover, when the police arrived, defendant was not wearing shoes or a shirt, which refutes his assertion that he had just arrived and was merely present to help his ex-wife

move out of the apartment. This evidence was sufficient to support defendant's conviction of maintaining a drug house.

II. Weight of the Evidence and Directed Verdict

Defendant also argues that the verdict was against the great weight of the evidence. Because defendant moved for a new trial on this ground, this issue is preserved for our review. See *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). We review for an abuse of discretion a trial court's decision on a motion for a new trial on the ground that the verdict was against the great weight of the evidence. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). A trial court does not abuse its discretion in denying a defendant's motion for a new trial where the denial of the motion was not manifestly against the clear weight of the evidence. *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003). The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *McCray*, *supra* at 637. As indicated by our discussion of the sufficiency of the evidence to support defendant's convictions, the evidence presented at trial does not preponderate so heavily against the verdicts that it would be a miscarriage of justice to allow those verdicts to stand. *Id*. Accordingly, the trial court properly denied defendant's motion. Similarly, because the prosecution presented sufficient evidence to sustain the jury's verdict, defendant was not entitled to a sua sponte directed verdict of acquittal. See *People v Allay*, 171 Mich App 602, 605; 430 NW2d 794 (1988).

III. Evidentiary Questions

Defendant next asserts several points of error in the admission of evidence at trial. Although defendant objected to the admission of evidence concerning the reason for the dissolution of his marriage to witness Sandy Martin, he failed to offer any objection to the remainder of the evidence challenged on appeal as improperly admitted by the trial court. When preserved by objection, we review evidentiary questions for an abuse of the trial court's discretion. *People v Gonzalez*, 256 Mich App 212, 217; 663 NW2d 499 (2003). When unpreserved, however, such matters are reviewed for plain error affecting the defendant's substantial rights. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003).

Contrary to defendant's assertion, evidence concerning the dissolution of his marriage to Martin was relevant to provide the jury with the history of their relationship, and to assist the jury in making credibility determinations. MRE 401; see also *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001) (under the "broad definition" of relevance provided for by MRE 401, "evidence is admissible if it is helpful in throwing light on any material point"). Further, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, MRE 403, especially in light of defendant's statement to the police that he was addicted to methamphetamine and his admission at trial of previous methamphetamine use. The trial court did not abuse its discretion in allowing the prosecutor to elicit testimony from defendant's ex-wife concerning the circumstances surrounding the dissolution of her marriage to defendant.

Defendant also asserts that Deputy John Hopkins was not qualified to offer an opinion regarding the sores on defendant's body being consistent with methamphetamine use. MRE 701 provides that "[i]f the witness is not testifying as an expert, the witness' testimony in the form of

opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." Hopkins testified that he had been a sheriff's deputy for over 22 years, had been involved with the narcotics unit for the past five years, and that the open sores covering defendant's body were consistent with defendant's admission that he was addicted to methamphetamine. The deputy's testimony was rationally based on his perception of defendant and was helpful to the determination that defendant was involved with methamphetamine. Thus, no error, plain or otherwise, occurred in the admission of the challenged evidence.

Defendant also argues that Detective James Zehm was not qualified to offer expert opinion testimony concerning the quantity of methamphetamine that would constitute a dose, and that the amount of methamphetamine in this case was likely for distribution. MRE 702 provides:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Detective Zehm testified that he had been assigned to the narcotics unit for seven years, was certified to dismantle methamphetamine laboratories, was trained in methamphetamine manufacture, and frequently investigated methamphetamine cases to stay current with pricing and packaging. The trial court certified the officer as an expert in the area of methamphetamine manufacture and sale, as well as the dismantling of methamphetamine laboratories. The officer testified that a typical single dose of methamphetamine was five milligrams, and that the amount in defendant's possession—2.2 grams—would likely be for distribution rather than personal use. The testimony was based on sufficient facts and data, and was the product of reliable principles and methods reliably applied to the facts of the case. The officer's specialized knowledge assisted the jury in understanding the evidence and determining facts in issue. No error occurred in the admission of the evidence. Because defendant has failed to demonstrate plain error affecting substantial rights regarding the admission of the allegedly improper evidence, he has forfeited the issue. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

IV. Jury Instructions

Defendant argues that the trial court made various instructional errors. However, counsel for defendant expressed satisfaction with the jury instructions as given; therefore, this issue is waived and there is no error to review.[1] *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004); *People v Hall (On Remand)*, 256 Mich App 674, 679; 671 NW2d 545 (2003).

[1] Defendant's claim that his counsel's acquiescence to the trial court's instruction denied him the
(continued…)

V. Prosecutorial Misconduct

Defendant next argues that the prosecutor engaged in misconduct. Because defendant failed to make contemporaneous objections and request curative instructions concerning the alleged instances of prosecutorial misconduct, this issue is unpreserved. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). We review unpreserved claims of prosecutorial misconduct for plain error. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). To avoid forfeiture of an unpreserved claim, defendant must demonstrate plain error that was outcome determinative. *Id*.

Issues of prosecutorial misconduct are decided on a case-by-case basis by examining the record and evaluating the prosecutor's remarks in context to determine whether the defendant was denied a fair and impartial trial. *People v Rodriguez*, 251 Mich App 10, 29-30; 650 NW2d 96 (2002). The propriety of a prosecutor's remarks depends on all the facts of the case. *Id*. Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *Id.*

Defendant argues that the prosecutor engaged in misconduct by eliciting irrelevant and prejudicial testimony from defendant's ex-wife that she was scared to testify because she was fearful of what would happen once she was released from jail, that her marriage to defendant dissolved in part due to his methamphetamine addiction, that defendant was unemployed in the month preceding their arrest, and that defendant drove her vehicle without a driver's license. We disagree.

The prosecutor's inquiry regarding whether defendant's ex-wife was afraid to testify was relevant to explain her demeanor on the stand. Further, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice because, taken in context, it did not suggest that she had been threatened by defendant, but rather, suggested that she was nervous about the course of her life once she was released from jail on charges stemming from the same incident.

Moreover, as already discussed, the prosecutor's inquiry regarding the reason for the dissolution of the marriage between defendant and his ex-wife was relevant to provide the jury with the history of their relationship and to assist the jury in making credibility determinations. Further, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice given defendant's statement to the police that he was addicted to methamphetamine and his admission at trial of previous methamphetamine use.

The prosecutor's inquiry regarding defendant's employment status was relevant to the issue whether defendant had control of the apartment while his ex-wife was at work, for purposes of the maintaining a drug house charge. Further, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice given that defendant testified that he engaged in part-time mechanic work since having stopped working at the junkyard at which he had been employed for 10 years. Moreover, although the relevance of whether defendant

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effective assistance of counsel is discussed *infra*.

possessed a driver's license is questionable, defendant volunteered that he did not possess a license, and "[a] party cannot complain that facts have been improperly proven when he himself voluntarily admits their truthfulness." *People v Lay*, 193 Mich 476, 488; 160 NW 467 (1916).

Defendant also argues that the prosecutor improperly shifted the burden of proof by explaining the concept of drawing reasonable inferences from circumstantial evidence during voir dire, and by commenting during rebuttal argument on the implausibility of defendant's version of events. However, while a prosecutor may not attempt to shift the burden of proof, *Abraham*, *supra* at 273, the prosecutor may attack the credibility of a defendant's exculpatory version of events. *Callon*, *supra* at 331. Further, the prosecutor's comments regarding inferences were accurate, and were reiterated by the trial court during jury instructions.

Defendant additionally argues that the prosecutor denigrated defendant and defense counsel by commenting during voir dire that simply because someone is convicted of a crime does not necessarily render their testimony unworthy of belief and that it was up to the jury to make credibility determinations. Again, however, the prosecutor's comments regarding the role of the jury in making credibility determinations were accurate, and were reiterated by the trial court during jury instructions.

Defendant also asserts that the prosecutor denigrated defendant and defense counsel by noting during rebuttal argument that defense counsel did not discuss defendant's version of events during closing argument because it was so incredible. Contrary to defendant's assertion, the prosecutor did not argue that defense counsel did not believe defendant's version of events, but rather, that defendant's version of events was so unbelievable that defense counsel opted not to mention it during closing argument. A prosecutor may argue from the facts that a defendant is unworthy of belief. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997).

Defendant also argues that the prosecutor engaged in improper conduct by eliciting the testimony of Deputy Hopkins and Detective Zehm regarding defendant's appearance as consistent with methamphetamine use, and the likelihood that the amount of methamphetamine found was for distribution, as opposed to personal use. As already discussed, however, the officers' testimony in these regards was properly admitted at trial. Consequently, its elicitation by the prosecutor was not improper.

Defendant also argues that the prosecutor engaged in improper conduct by arguing facts not in evidence when she stated during closing argument that it was evident that methamphetamine was manufactured at the apartment, that the methamphetamine was intended for delivery, that the quantity of methamphetamine was too large for personal use, and that defendant's ex-wife received nothing in exchange for her testimony. While a prosecutor may not argue a fact to the jury that is not supported by the evidence, a prosecutor is free to argue the evidence and any reasonable inferences that arise from it. *Callon*, *supra* at 330. Evidence was presented that the apartment contained equipment used in manufacturing methamphetamine, and that while the quantity of methamphetamine could be used by an individual over a long period of time, it was likely intended for sale based on its packaging. Further, evidence was presented that his ex-wife's plea bargain was not contingent on testifying against defendant.

Finally, defendant argues that the cumulative effect of the various instances of alleged prosecutorial misconduct constitutes error requiring reversal. However, "[t]he key test in

evaluating claims of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial." *Watson*, *supra* at 594. Where the prosecutor's conduct did not deny defendant a fair and impartial trial, reversal is not warranted. *Id*. Defendant has failed to demonstrate plain error that was outcome determinative; therefore, reversal is not warranted in this case.

VI. Sentencing

Defendant next argues that the trial court abused erred in its assessment of points for offense variables 14, 15, and 19. A sentencing court has discretion to determine the score for an offense variable (OV), and we will affirm the court's scoring if there is any evidence to support it. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Under MCL 777.44(1)(a), the trial court must score OV 14 at ten points if "[t]he offender was a leader in a multiple offender situation." Defendant's ex-wife admitted that she allowed defendant to stay at her apartment, was aware that he was manufacturing methamphetamine, and provided him with transportation when he was carrying the bucket containing ammonia. Moreover, evidence was presented from which inferences could be drawn that defendant's ex-wife allowed him to use her vehicle to purchase supplies for manufacturing methamphetamine, and that she purchased supplies for manufacturing methamphetamine. Further, evidence was presented that defendant's ex-wife pleaded guilty to possession of methamphetamine arising out of the incident. Because the record supports a finding that defendant was a leader in a multiple offender situation, the trial court did not abuse its discretion in scoring ten points for OV 14.

MCL 777.45(1)(g) requires that the trial court score OV 15 at five points if "[t]he offense involved . . . possession with intent to deliver . . . any other controlled substance . . . or possession of controlled substances . . . having a value or under such circumstances as to indicate trafficking." "Trafficking" is defined as "the sale or delivery of controlled substances . . . on a continuing basis to 1 or more other individuals for further distribution." MCL 777.45(2)(c). Defendant argues that five points were erroneously assessed for OV 15 based on the lack of evidence of trafficking. The prosecutor agrees that the circumstances of this case do not indicate trafficking, but contends that an assessment of five points under MCL 777.45(1)(g) only requires a showing that defendant intended to deliver the methamphetamine, and does not require a showing that the circumstances of the case indicated trafficking. We review de novo issues of statutory interpretation. *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003). The prosecutor's reading of MCL 777.45(1)(g) is consistent with the well-established principle that, in construing a statute, courts must give effect to every word, phrase, and clause, and must avoid an interpretation that would render any part of the statute surplusage or nugatory. *People v Perkins*, 473 Mich 626, 638; 703 NW2d 448 (2005).

In toto, MCL 777.45(1)(g) provides that five points are to be scored for an aggravated controlled substance offense if:

> [t]he offense involved the delivery or possession with intent to deliver marihuana or any other controlled substance or a counterfeit controlled substance or possession of controlled substances or counterfeit controlled substances having a value or under such circumstances as to indicate trafficking.

Parsing the statute into two clauses offers an interpretation that gives effect to the entire statute without rendering any part of it surplusage. That is, the statute should be interpreted to mean that five points are to be scored: 1) if the offense involved the delivery or possession with intent to deliver drugs, ***or*** 2) if the offense involved possession of drugs having a value or under such circumstances as to indicate trafficking. It would be redundant to require a showing that the offense indicated trafficking in cases where the defendant was convicted of delivery or possession with intent to deliver—crimes which by their very nature involve trafficking or an inference of trafficking.

As previously noted, defendant admitted ownership of five packets of methamphetamine with a total weight of 2.2 grams—a quantity equal to approximately 450 doses each giving a 12 to 16 hour high and holding a street value of approximately $200 to $250. Further, a digital scale commonly used to weigh quantities of drugs to package for sale was found with the packets. Because the record supports a finding that the offenses involved the possession with intent to deliver methamphetamine, the trial court did not abuse its discretion in scoring five points for OV 15.

Under MCL 777.49(c), the trial court must score OV 19 at ten points if "[t]he offender otherwise interfered with or attempted to interfere with the administration of justice." Interfering or attempting to interfere with the administration of justice includes acts that constitute obstruction of justice, but is not limited to such acts. *People v Barbee*, 470 Mich 283, 286; 681 NW2d 348 (2004). "[T]he phrase 'interfered with or attempted to interfere with the administration of justice' encompasses more than just the judicial process." *Id*. at 287-288. For example, because "[l]aw enforcement officers are an integral component in the administration of justice," providing a false name to the police constitutes interference with the administration of justice. *Id*. at 288. Scoring decisions for which there is *any* evidence in support will be upheld, *Hornsby*, *supra* at 468, and the evidence indicated that defendant hid in a closet to avoid detection. Because the record supports a finding that defendant attempted to interfere with the administration of justice, the trial court did not abuse its discretion in scoring 10 points for OV 19.

Defendant also argues that MCL 777.49(c) is unconstitutionally void for vagueness in that it does not provide fair notice of the conduct proscribed and that it is so indefinite as to confer unstructured and unlimited discretion on the trial court to determine whether his conduct constitutes that prohibited by statute. Generally, we review de novo the constitutionality of a statute. *People v Dewald*, 267 Mich App 365, 382; 705 NW2d 167 (2005). However, defendant did not challenge the constitutionality of OV 19 in the trial court; therefore, this issue is unpreserved, and we review it for plain error affecting substantial rights. *People v Sands*, 261 Mich App 158, 160; 680 NW2d 500 (2004).

A party challenging the constitutionality of a statute has the burden of proving its unconstitutionality, and a party challenging the facial validity of a statute must show that no circumstances exist under which it would be valid. *Id*. at 160-161. Our Supreme Court has conceded that "interfered with or attempted to interfere with the administration of justice" is a broad phrase. *Barbee*, *supra* at 286. However, we conclude that it gives "a person of ordinary intelligence a reasonable opportunity to know what is prohibited," and "its meaning is fairly ascertainable by reference to judicial interpretations, the common law, dictionaries, treatises, or

the commonly accepted meanings of words." *Sands*, *supra* at 161. Defendant has failed to demonstrate plain error affecting his substantial rights; therefore, this issue is forfeited.

Finally, defendant argues that he is entitled to resentencing under *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), because the trial court based his sentence on facts that were not determined by the jury beyond a reasonable doubt. However, we must follow the decisions concluding that *Blakely* does not apply to sentencing imposed in Michigan. See *People v Drohan*, 475 Mich 140, 143, 164; 715 NW2d 778 (2006).

Defendant has failed to demonstrate that errors occurred in scoring the sentencing guidelines or that inaccurate information was relied on in determining his sentence. Thus, because defendant's minimum sentences are within the appropriate guidelines sentence ranges, we must affirm the sentences imposed by the trial court. MCL 769.34(10).

VII. Effective Assistance of Counsel

Defendant next argues that he was denied the effective assistance of counsel. To prove ineffective assistance of counsel, defendant must show that his counsel's performance was deficient, and that there is a reasonable probability that, but for that deficient performance, the result of the trial would have been different. *Matuszak*, *supra* at 57-58. In doing so, defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Id*. at 58.

Defendant argues that defense counsel was ineffective for failing to object to the alleged instances of trial error, prosecutorial misconduct, and sentencing error, and for failing to argue that insufficient evidence existed to sustain his convictions and that the convictions were against the great weight of the evidence. However, as already discussed, the allegations of error raised by defendant on appeal are meritless. Because counsel is not ineffective for failing to advocate or otherwise raise meritless or futile objections and positions, see *People v Moorer*, 262 Mich App 64, 76; 683 NW2d 736 (2004), defendant has failed to demonstrate that his counsel's performance was deficient.

Defendant further argues that his counsel was ineffective for having acquiesced to the instructions given by the trial court. Defendant argues that the trial court's failure to instruct the jury with the definition of "manufacture" set forth in MCL 333.7106(2) for use in considering defendant's guilt of the charges of maintaining a methamphetamine laboratory and manufacturing or possessing methamphetamine with the intent to deliver, was error warranting objection by counsel. However, regarding the charge of maintaining a methamphetamine laboratory, MCL 333.7401c provides its own definition of "manufacture." See MCL 333.7401c(7)(c). Thus, instructing on the definition set out in MCL 333.7106(2) would have been erroneous. *Schultz*, *supra* at 703. Moreover, insofar as the definition of "manufacture" provided in MCL 333.7106(2) contains an exclusion for the preparation of a controlled substance for personal use, it was inapplicable to the charge of manufacturing or possessing with intent to deliver methamphetamine deliver methamphetamine in violation of MCL 333.7401(2)(b)(i). Indeed, the charge of manufacturing or possessing methamphetamine with the intent to deliver necessarily excludes the manufacture or use of that substance for personal use.

Defendant also argues that the jury should have been instructed that a person does not "possess" a controlled substance if he only has contact with it for the purpose of destroying it. See *People v Williams*, 188 Mich App 54, 58; 469 NW2d 4 (1991) ("[t]he possession of contraband for the mere purpose of destroying it is not unlawful"). However, while defendant told the police that he was going to dispose of the methamphetamine, he did not present a defense, and the evidence did not support a claim, that he merely possessed the methamphetamine in order to destroy it. Therefore, an instruction on that point would have been erroneous. See *People v Ho*, 231 Mich App 178, 189, 585 NW2d 357 (1998) ("a trial court is required to give requested instructions only if the instructions are supported by the evidence or the facts of the case").

Finally, defendant asserts error in the failure of the jury to be instructed on the definition of the phrase "keep or maintain," as set forth by this Court in *Griffin*, *supra* at 32, for use in considering the charge of maintaining a drug house. As discussed above, however, the evidence supported that defendant in fact exercised authority or control over the apartment for purposes of making it available for keeping methamphetamine, and that he did so continuously for an appreciable period, as required by *Griffin*. Consequently, any error in the failure of the trial court to instruct on this point did not prejudice defendant. Counsel was not, therefore, ineffective for having failed to challenge the trial court's instructions to the jury at trial.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens